



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 955**

**[Doc. No. AMS-FV-12-0071; FV13-955-1 IR]**

**Vidalia Onions Grown in Georgia; Change in Reporting and Assessment Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule changes the reporting and assessment requirements currently prescribed under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). This rule changes the date by which handlers are required to submit monthly shipping reports and their corresponding assessments to the Committee from the fifth day of the month to the tenth day of the month. In addition, this rule also changes the due date to the first business day after the tenth of the month should the tenth fall on a weekend or a holiday. These changes are expected to benefit handlers without negatively affecting program compliance.

**DATES:** Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by

[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Corey Elliott, Marketing Specialist, or Christian Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA;

Telephone: (863) 324-3378, Fax: (863) 325-8793, or E-mail: Corey.Elliott@ams.usda.gov or Christian.Nissen@ams.usda.gov

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 955, as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an

order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the reporting and assessment requirements currently prescribed under the order. This rule changes the date by which handlers are required to submit monthly shipping reports and their corresponding assessments to the Committee from the fifth day of the month to the tenth day of the month. In addition, this rule also changes the due date to the first business day after the tenth of the month should the tenth fall on a weekend or a holiday. These changes are expected to benefit handlers without negatively affecting program

compliance. The Committee unanimously recommended these changes at a meeting on August 9, 2012.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Currently this section provides, in part, that handlers are required to file with the Committee a monthly shipping report on the fifth day of each month following the month in which shipments were made.

Section 955.42 provides the authority for the collection of assessments from handlers to administer the order and the authority to establish the time and rate of assessments. Section 955.142 specifies that handler assessments are required to be paid on a monthly basis corresponding with the due date of the monthly shipping reports. In addition, §§ 955.101 and 955.142 specify that should the fifth day of the month fall on a weekend or holiday, both reports and assessments are due on the first business day prior to the fifth.

This rule revises §§ 955.101 and 955.142 to require that handlers submit monthly shipping reports and

assessments to the Committee by the tenth day of the month following the month in which shipments were made. This rule also changes the reporting and assessment requirements to state that if the tenth falls on a weekend or holiday, the monthly reports and assessments are due on the first business day after the tenth day of the month.

At the August meeting, the Committee discussed that the industry has expressed concern regarding the difficulties some handlers were having in submitting their reports and assessments by the fifth of the month. Some handlers have reported that the current due date of the fifth of the month has created a hardship for them because of the short turnaround time for preparing the monthly shipping report and getting it submitted to the Committee with their assessment payment by the due date.

Some of the data on the shipping report is not available or verifiable until after the final day of the month when all shipments have been made. This data is necessary for the handlers to prepare and submit accurate shipping reports to the Committee and to pay assessments associated with those shipments. Handlers routinely find that they do not have sufficient time to close out their internal month-end sales paperwork in time to complete and

submit their monthly reports and the assessment payment by the fifth of the month.

Further, for those times when the fifth falls on a weekend or holiday, the first business day before the weekend or holiday could be as early as the second of the month. This can make it even more difficult for handlers to meet the established due date. Handlers who have the staff necessary to gather data quickly can have a difficult time getting reports and assessments to the Committee office in just two days. Such a short turnaround can be even more challenging for smaller operations.

In addition, the Committee established penalties and an increased interest rate for late assessments in 2011. Although this has helped improve compliance with reporting and assessment requirements, handlers that were already having trouble submitting their monthly reports and assessments now face interest and late fees on late payments.

Therefore, the Committee voted unanimously to extend the monthly reporting and assessment due date an additional five days to the tenth of the month. For those occasions when the tenth falls on a weekend or a holiday, the due date will be the next business day following the tenth.

These changes will allow handlers additional reporting time, and should provide handlers sufficient time to receive the sales and shipment data information needed to complete their monthly reports and to submit their assessments.

### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 40 handlers of Vidalia onions who are subject to regulation under the order and approximately 80 onion producers in the designated production area. Small agricultural service firms, which include handlers, are defined by the Small Business



Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. (13 CFR 121.201).

Based on National Agricultural Statistical Service (NASS) and Committee data, the average annual grower price for fresh Vidalia onions during the 2012 season was around \$17 per 40-pound container, and total Vidalia onion shipments were around 4,450,000 40-pound containers. Using available data, more than 90 percent of Vidalia onion handlers have annual receipts less than \$7,000,000. However, the average receipts for Vidalia producers were around \$946,000 in 2012, which is higher than the SBA threshold for small producers. Assuming a normal distribution, the majority of handlers of Vidalia onions may be classified as small entities, while the majority of producers may be classified as large entities, according to the SBA definition.

This rule changes the reporting and assessment requirements currently prescribed under the order. This rule revises §§ 955.101 and 955.142 to change when monthly shipping reports and assessments, respectively, are due to the Committee from the fifth day of the month to the tenth

day of the month following the month in which the shipments were made. In addition, this rule also changes both sections to specify that should the tenth fall on a weekend or a holiday, the due date will be the first business day after the tenth of the month. Authority for these changes is provided for in §§ 955.60 and 955.42. These changes are expected to benefit handlers without negatively affecting program compliance. The Committee unanimously recommended these changes at a meeting on August 9, 2012.

It is not anticipated that this action will impose any additional costs on the industry. This action relaxes the current due dates for monthly reports and assessments, which should benefit all businesses. Handlers may see reduced costs as they will have more time to submit reports without accruing late payment penalties. While the majority of Vidalia onion handlers are considered to be small businesses, the effects of this rule are not expected to be disproportionately greater or less for small entities than for larger entities.

As an alternative to this action, the Committee considered making no change to the current regulations. However, filing reports and paying assessments by the fifth day of the month was a hardship for some handlers. Thus,

the Committee determined that action was needed, and this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Generic Vegetable Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 9, 2012, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the reporting and assessment requirements currently prescribed under the

order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) this rule relaxes requirements by giving handlers additional time to submit monthly reports and assessments; (2) Vidalia onion handlers began shipping onions on April 17; (3) this issue has been widely discussed at industry meetings, and the Committee has kept the industry well informed; (4) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (5) this rule provides a 60-day comment period, and any

comments received will be considered prior to finalization of this rule.

#### **List of Subjects in 7 CFR Part 955**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

#### **PART 955 - VIDALIA ONIONS GROWN IN GEORGIA**

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 955.101 [Amended]

2. In § 955.101, paragraph (b) is amended by revising the word "fifth" to read "tenth", and the words "prior to" to read "following" respectively, everywhere they appear.

§ 955.142 [Amended]

3. In § 955.142, paragraph (a) is amended by revising the word "fifth" to read "tenth", and the words "prior to" to read "following" respectively, everywhere they appear.

Dated: May 9, 2013

Rex A. Barnes  
Acting Administrator  
Agricultural Marketing Service

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